



California Fair Political Practices Commission

July 28, 1986

Natalie E. West
Professional Corporation
1202 Grant Avenue, Suite E
Novato, CA 94947

Re: Your Request for Advice
Our File No. A-86-211

Dear Ms. West:

Thank you for your request for advice on behalf of Novato City Councilmember Dennis McQuaid, regarding his duties under the conflict of interest provisions of the Political Reform Act ("the Act").^{1/}

QUESTIONS

1. A law firm in which Councilmember McQuaid is a partner has recently purchased a building located in downtown Novato, about 220 feet from the proposed site for a Civic Center. You have asked whether Councilmember McQuaid must resign from the Civic Center negotiating team and/or disqualify himself from decisions concerning the property.

2. The building purchased by Councilmember McQuaid's law firm is located in a redevelopment survey area. Councilmember McQuaid serves on the City Council's redevelopment subcommittee. Is Councilmember McQuaid prohibited from participating in decisions of the subcommittee or the City Council involving redevelopment in the downtown area?

CONCLUSION

1. The Act does not require Councilmember McQuaid to resign from the negotiating team. However, he may not make, participate in making or in any way attempt to use his official position to influence any decision which will have a

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

significant impact on the completion of the Civic Center project.

2. Councilmember McQuaid may not make, participate in making or in any way attempt to use his official position to influence any redevelopment decision of the Redevelopment Agency, the City Council or the Council's redevelopment subcommittee if the decision will have a material financial effect on his law firm or on the building owned by his law firm.

FACTS

Councilmember McQuaid is a partner, owning a 30 percent interest, in the law firm of McQuaid, Bedford and Brayton. The law firm has purchased a commercial building located at the corner of Redwood and Grant Avenues in the downtown area of Novato. The law firm plans to remodel the building for office space and will begin to occupy the structure about October 1, 1986.

The City plans to construct a new Civic Center. The City selected a developer/architect team and is currently negotiating with them to develop the final design, financing arrangements and necessary legal documents. Councilmember McQuaid represents the Council in these negotiations, and is authorized to negotiate a development agreement with the architect/developer team for the design and construction of the new Civic Center. Furthermore, the City Council will make numerous decisions involving the Civic Center including finalizing the design and approving the plan and related documents. The law firm's building is about 220 feet from the new Civic Center site.

In addition, the City Council sitting as the Novato Redevelopment Agency has designated the area in which the law firm's building and the new Civic Center are located as a redevelopment survey area. A redevelopment feasibility report has been completed and accepted. A parking study has also been completed. However, the City is not currently taking any actions to implement redevelopment in the downtown area. Councilmember McQuaid serves on the Council redevelopment subcommittee, an advisory committee composed of two councilmembers.

ANALYSIS

The Political Reform Act requires that public officials disqualify themselves from making or in any way participating in any decision in which they have a financial interest.

Section 87100. An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

* * *

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (b) and (d).

Councilmember McQuaid has an interest in the real property purchased by the law firm.^{2/} Furthermore, he is a partner and holds an investment interest in his law firm. Accordingly, Councilmember McQuaid must disqualify himself from any decision which could have a reasonably foreseeable material financial effect on the real property or on the law firm.

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. These regulations are contained in 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed), and set forth different tests depending on the type of financial interest which would be affected.

You have asked whether Councilmember McQuaid may participate in decisions regarding the proposed Civic Center and regarding redevelopment in downtown Novato.

^{2/} Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the individual or his immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater. Section 82033. Since Councilmember McQuaid is a 30% owner of his law firm, the property owned by the law firm is attributed to him on a 30% basis.

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Civic Center

Given the proximity of the proposed Civic Center site to the property in which Councilmember McQuaid holds an interest, and given the size of the proposed Civic Center development, which according to the map you provided encompasses four city blocks, we believe that development of the Civic Center will materially affect both the fair market value and the income producing potential of Councilmember McQuaid's property. 2 Cal. Adm. Code Section 18702(b)(2). Accordingly, Councilmember McQuaid may not, as a member of the negotiating team or the City Council, make, participate in making or in any way attempt to use his official position to influence any decision which will have a significant impact on the completion of the Civic Center project. Thus, while the Act does not require Councilmember McQuaid to resign from the negotiating team, it may limit his ability to participate in the negotiations to the point that it is impractical for him to remain on the team.

Redevelopment

Councilmember McQuaid may not make, participate in making or in any way attempt to use his official position to influence any redevelopment decision of the Redevelopment Agency, the City Council, or the Council's redevelopment subcommittee if the decision will have a material financial effect on the building in which Councilmember McQuaid holds an interest, or on Councilmember McQuaid's law firm.

You have not presented a specific decision for our analysis. However, we point out that with regard to each redevelopment decision, the following language from the Commission's Oglesby Opinion (1 FPPC Opinions 71, No. 75-083, July 2, 1975, copy enclosed) should be kept in mind:

* * *

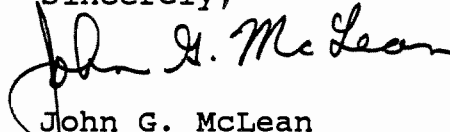
One of the major goals of a redevelopment plan is increasing the property values, in particular within the project area and less directly within the entire community. In redeveloping the blighted areas of the community, all property becomes more valuable, particularly that which has been redeveloped....

(At p. 10.)

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If you would like to discuss a particular decision or if I can be of further assistance on this matter, please let me know. I may be reached at (916) 322-5901.

Sincerely,

A handwritten signature in dark ink, appearing to read "John G. McLean". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "McLean" following in a similar style.

John G. McLean
Counsel
Legal Division

JGM:KT:plh
Enclosure

LAW OFFICES
NATALIE E. WEST
PROFESSIONAL CORPORATION
SUITE 1335, ORDWAY BUILDING
ONE KAISER PLAZA
OAKLAND, CALIFORNIA 94612
(415) 839-9468

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NOVATO OFFICE
1202 GRANT AVENUE
SUITE E
NOVATO, CALIFORNIA 94947
(415) 892-8878

REPLY TO: Novato

June 24, 1986

Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: Request for Advice: Gov. Code Section 83114

Dear Sir or Madam:

Dennis McQuaid is a city councilmember in the City of Novato. He is also a partner, owning a 30% interest, in the law firm of McQuaid, Bedford and Brayton. The law firm has purchased a commercial building located at the corner of Redwood and Grant Avenues in the downtown area of Novato. The sale will close on June 30. The law firm plans to remodel the building for office space and will occupy the structure about October 1, 1986.

The City is currently considering two projects that may affect the downtown area.

First, the City plans to construct a new Civic Center. The existing City Hall is a historic structure which cannot accommodate the City's current administrative functions. Consequently, the City has held a design competition for urban design and development proposals for a new Civic Center complex. The City selected a winning developer/architect team and is currently negotiating with the winning team to develop the final design, financing arrangements and necessary legal documents. Councilmember McQuaid represents the Council on the Civic Center Development Agreement negotiations team, authorized to negotiate a development agreement with the architect/developer team for design and construction of the new civic center. Furthermore, the City Council will make numerous decisions involving the Civic Center including finalizing the design, approving the plan, as well as related documents and environmental documents, letting contracts and so forth.

The property line of the law firm's building is about 220 feet from the boundary of the Civic Center area. See enclosed map.

FPPC

Re: Request for Advice

June 24, 1986

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Based on the foregoing, is Councilmember McQuaid required to resign from the negotiating team and/or disqualify himself from City Council decisions concerning the property?

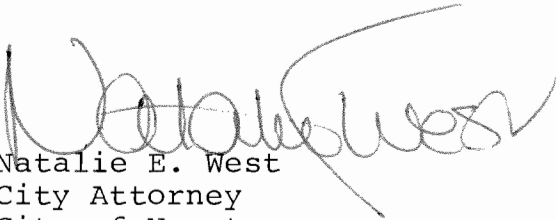
In addition, the City Council sitting as the Novato Redevelopment Agency has designated the area in which the law firm's structure is located as a redevelopment survey area.

A redevelopment feasibility report has been completed and accepted. A parking study has just been completed. However, the City is not currently taking any actions to implement redevelopment in the downtown area. Councilmember McQuaid serves on the Council redevelopment subcommittee, an advisory committee composed of two councilmembers.

If the City Council takes further action, is Councilmember McQuaid required by the Political Reform Act to disqualify himself from discussions, recommendations or decisions of the redevelopment subcommittee or the City Council involving redevelopment in the downtown area? 1/

Your prompt attention to this matter is appreciated. Please contact me if I can provide any additional information.

Very truly yours,



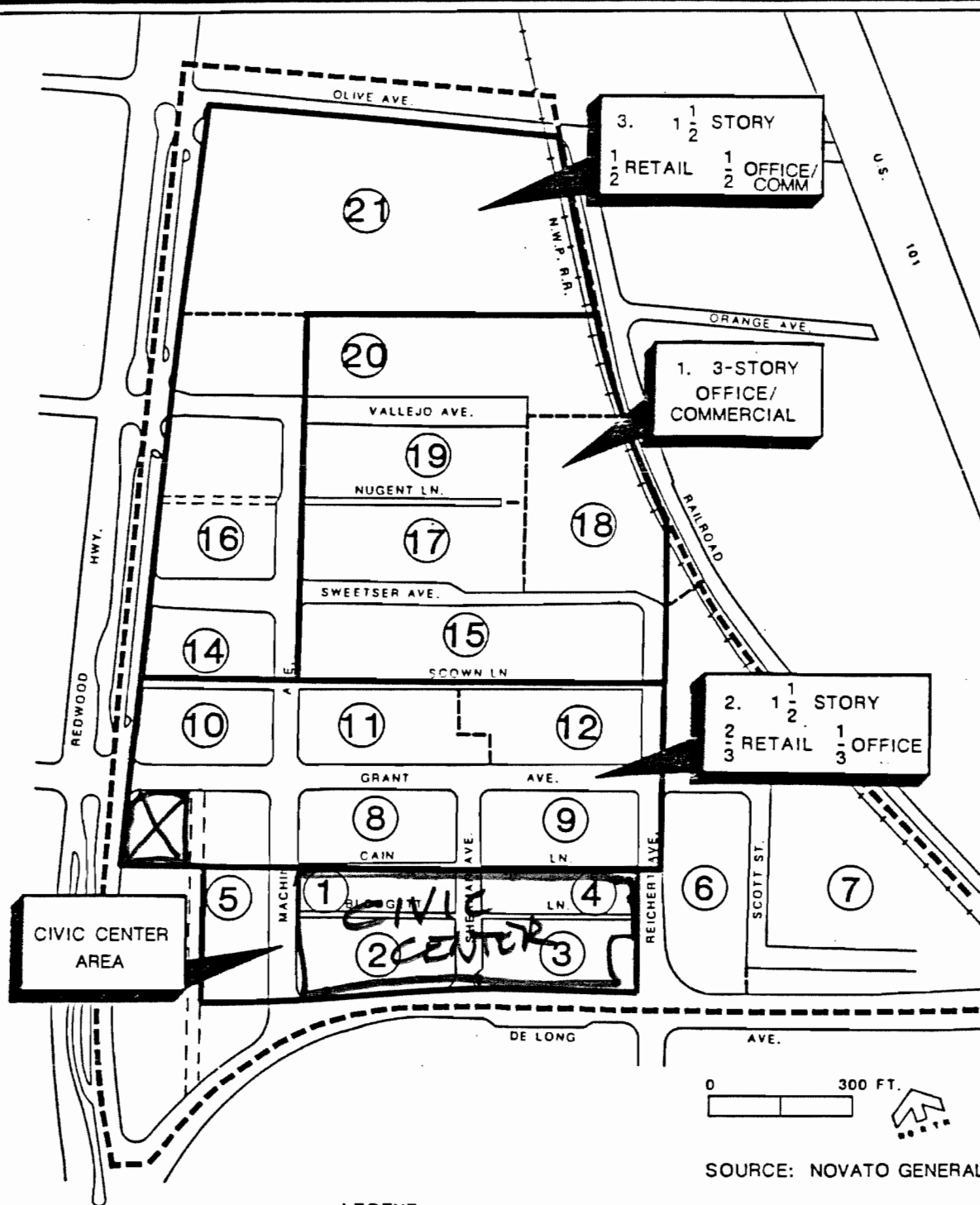
Natalie E. West
City Attorney
City of Novato

Enclosure

cc: Councilmember McQuaid

1/

I am familiar with the provisions of Health and Safety Code Section 33130, and realize that the FPPC does not interpret or administer that section.



LONG RANGE DEVELOPMENT ASSUMPTIONS
Novato Old Town Parking Study



California Fair Political Practices Commission

June 26, 1986

Natalie E. West
Professional Corporation
Ordway Building, Suite 1335
One Kaiser Plaza
Oakland, CA 94612

Re: 86-211

Dear Ms. West:

Your letter requesting advice under the Political Reform Act has been received on June 26, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

John G. McLean
Counsel
Legal Division

JGM:plh